IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4616 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ALTAF RAFIKBHAI MEMON

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4616 of 2002

MR AR MAJMUDAR for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 27/06/2002

ORAL JUDGEMENT

The petitioner is a detenu detained under the Gujarat Prevention of Anti-Social Activities Act, 1985 vide order dated 19.2.2002 passed by the Police Commissioner, Surat city in exercise of powers conferred under sub-section(1) of Sec. 3 of the said Act.

The petitioner has been branded as dangerous person within the meaning of sec. 2(c) of the Act as he has been found involved in more than three criminal cases punishable under sec. 380, 454, 457 IPC etc. In two incidents, the Investigating Agency had recovered some muddamal at the instance of the petitioner. The subjective satisfaction recorded by the detaining authority is that he apprehends that the activities of the petitioner is dangerous and with a view to prevent such activities he is required to be detained. The sponsoring machinery had forwaded the papers of all the three offences registered against the petitioner along with the statements of two other witnesses to the detaining authority and the authority has recorded the subjective satisfaction reflected in the grounds for detention served to the detenu which is at Annexure-C, at page 20.

Ld. counsel for the petitioner Mr.Majmudar has taken me through the number of grounds whereby the petitioner has assailed the legality and validity of the order of detention however, he has mainly focussed on the ground that the order under challenge should be quashed because the alleged activity of the detenu cannot be said to be the activities prejudicial to the public order. It is submitted that for the sake of argument it is accepted that he has been involved in the theft case even than such activities can be said to be detrimental to the law and order and not the public order defined in PASA Act. I have considered the submission of Ld. G.P.Mr AD Oza for the State. However, in view of the ratio of the decision of this court in the case of Ashokbhai Jivraj Jivabhai Solanki Vs. Police Commissioner, Surat & Ors., reported in 2000(1) GLR P. 816, the say of the learned counsel for petitioner shall have to be accepted. In the cited case, the detenu Ashok Jivraj was found involved in four different criminal cases and all these cases were offence against the body of a person. There were statements of independent witnesses against the detenu. By referring the decision of Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police & Ors., reported in 1995(2) GLR 1268 (SC) and the ratio of the decision of Arun Ghosh vs. State of West Bengal, reported in 1970(1) SCC p. 98, it has been observed that the stry incidents would not affect the public order and the order of detention cannot be passed in such cases. In the cited decision, this Court has also observed that "looking to the incident, the case falls under the maintenance of law and order and not the public order." On facts, when court reaches to a conclusion that the case falls under

the maintenance of law and order and not the public order, the subjective satisfiaction arrived at by the detaining authority does not remain valid. Unless it is found that the case falls in the category of the activities adversely affecting the public order, the detaining authority has no jurisdiction to pass the order of detention. The order of detention under challenge therefore, cannot sustain. Other grounds assailing the validity and legality of the order is not required to be discussed, hence not discussed.

In the result, this petition is allowed. The impugned order of detention dated 19.2.2002 passed by the Police Commissioneer, Surat City is qashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS permitted.

(C.K. BUCH, J.)
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